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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/762,152      | 01/21/2004  | Dean Larry DuVal     | 9496                | 4966             |

27752 7590 04/16/2007  
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| EXAMINER |
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GRAVINI, STEPHEN MICHAEL

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3749

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE  | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS                               | 04/16/2007 | PAPER         |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/762,152

Applicant(s)

DUVAL ET AL.

Examiner

Stephen Gravini

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-18,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-18,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20070222.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 13, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds (US 6,190,420). The claimed invention is reasonably and broadly construed, in light of the accompanying specification, as being disclosed by Reynolds as comprising:

a) monitoring an operating temperature of a drying apparatus (col. 2, l. 20) during a drying cycle of said drying apparatus; and

b) applying a fabric treatment composition comprising a perfume (col. 2, l. 10) and a treatment material (col. 2, l. 2) to a fabric article (col. 2, l. 15) during said drying cycle of said drying apparatus (col. 2, l. 20), said application occurring after said drying apparatus has reached a first control operating temperature equal to or higher than about 60 degrees C (col. 4, ll. 35-37) and after said drying apparatus has reached a second operating temperature of less than about 60 degrees C (col. 4, ll. 35-37) but before said drying apparatus has reached a third operating temperature of about 25 degrees C. It is noted that all driers have a heating sub-cycle (from ambient to operational temperature), a constant operational temperature sub-cycle, and cooling sub-cycle (from the operational temperature to ambient).

***Claim Rejections - 35 USC § 103***

Claims 12, 14-18, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds. Reynolds discloses the claimed invention, as rejected above, except for the claimed specific weight percentages, operating temperatures, boiling or flash point, or selected group material. It would have been an obvious matter of design choice to provide specific values as claimed since the teachings of Reynolds would perform the invention as claimed regardless of the claimed specific values.

***Double Patenting***

Claims 12-18, 32, 38, and 39 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-19 of copending Application No. 10/839,549. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been an obvious matter of design choice to claim the present application specific parameter values, since both applications would perform the claimed invention regardless of the claimed value.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

Applicant's arguments filed March 5, 207 have been fully considered but they are not persuasive.

*anticipation*

Current Office practice guides examination such that claims are reasonably and broadly construed, in light of the accompanying specification. In this application, applicants argue that the claims should be more narrowly construed than permitted by current Office practice. As rejected above and recognized in applicants arguments to those rejections, primary reference Reynolds inherently teaches the claimed monitoring an operating temperature of a drying apparatus during its drying cycle because the disclosed temperatures and times of that clothes dryer reference necessarily must result in monitoring time and temperature based on the values given. The claimed and argued fabric treatment application at three different temperature values is also inherent to the teachings of Reynolds because as the clothes drying operation heats up, reaches an operating condition, then cools, the disclosed composition treated dryer sheet applies a fabric treatment composition during the drying cycle event. The argued specific events are construed such that those skilled in the art would understand Reynolds to perform the claimed steps during the disclosed times and temperatures. The anticipatory rejection is believed proper and maintained.

*obviousness*

Applicants assert that the obviousness rejections are overcome because the anticipatory rejection should be withdrawn. The anticipatory rejection is maintained and the obvious rejections is believed proper and maintained.

*double patenting*

The double patenting rejection is not argued or terminally disclaimed such that the rejection is believed proper and maintained.

**Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571 272 4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SMG  
April 15, 2007

